

ORIGINAL

Decision No. 11053

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Proceedings on the Commission's Own
 Motion to require restoration of
 street car service by the San Diego
 Electric Railway Company on Adams
 Avenue in San Diego and to determine
 the reasonable, proper and adequate
 facilities and regulations to be
 required for future maintenance of
 such service.

Case No. 1809.

- R. G. Dilworth, for San Diego Electric Railway Company.
- H. C. Ryan and A. D. Hendee, for Districts outside City.
- S. J. Higgins, City Attorney, and Arthur Wright, Deputy City Attorney, for City of San Diego.
- H. S. Utley, District Attorney, and E. S. Lovett, Deputy District Attorney, for County of San Diego.

ROWELL, COMMISSIONER:

O P I N I O N

This proceeding on the Commission's own motion was instituted at the formal request of the City of San Diego and of a committee of citizens to require the restoration of street car service upon Adams Avenue by the San Diego Electric Railway Company. An Order to Show Cause was issued, returnable September 12th, and a public hearing was held in San Diego on September 12th and 13th. At the conclusion of this hearing a conference was held between representatives of the City and of the Company, a record of which conference was, by stipulation, made a part of the record of this proceeding. The matter is now submitted and ready for decision.

It appears that the Company, on the night of August 26th, 1922, removed its tracks on Adams Avenue in the City of San Diego from Park Boulevard to a point near the City Limits, the portion removed being approximately three-quarters of a mile in length. This left the remainder of the line, which extends a mile beyond the City Limits, without means of street car service. The Company has, however, maintained and operated motor busses for the transportation of passengers from Park Boulevard to the end of the Adams Avenue car line, over which street car service was formerly rendered. No authorization was obtained from the Railroad Commission for this discontinuance of street car service and substitution of motor busses, nor was any notice given to the public of the intended change.

In response to the Commission's Order to Show Cause the Company appeared and admitted the discontinuance of car service and the taking up of tracks without prior notice to the public or authorization from this Commission, but claimed as justification for their action that the City Council was about to institute proceedings for the paving of Adams Avenue, thus imposing upon the Company the cost of paving between its tracks and for two feet on each side thereof, all of which it was claimed was contrary to a previous understanding that such action would not be taken prior to a special election which had been called for October 10th to submit to the voters certain amendments to the City Charter authorizing the City Council to relieve the Company from the burdensome paving requirements of its franchises. The City denied that it had in any sense broken faith with the Company, and considerable evidence was introduced dealing with prior negotiations on the paving question. It is unnecessary, however, to further consider this issue. It is referred to here solely to indicate the position taken by the

parties at the hearing. A complete solution of the paving problem on Adams Avenue was accomplished by the agreement reached in the conference between the representatives of the City and the Company, to which further reference will be made later.

The immediate issue, and in a strict sense the sole issue, presented is whether or not the discontinuance of service and the removal of tracks on the Adams Avenue line was justified. In the absence of prior authorization by the Commission for such discontinuance based upon a proper showing as to the profitableness of this line and of the system as a whole, this question admits of but one answer. No utility can arbitrarily discontinue its service and withdraw property voluntarily dedicated to a public use. It is true that the Company at the time of the hearing offered for filing a supplemental application in a prior proceeding (Application No. 5009) in which the Commission, by its Decision of November 14, 1919, Decision No. 6836, had refused authorization for the abandonment of the Adams Avenue line because of inadequate showing. The Company also submitted some evidence showing that the Adams Avenue line has been operated at a loss. These circumstances do not justify the abandonment of service prior to the submission to the Commission of all the evidence bearing upon this question and the Commission's final decision thereon. Therefore, even though the conference between the Company and the City officials had not furnished a basis for the restoration of service on Adams Avenue, the Commission would feel constrained to make its Order requiring the immediate restoration of tracks and resumption of service on this line.

The evidence shows that the Adams Avenue line was originally built in 1907, and that at least a part of the construction cost was borne by persons interested in the development of real estate sub-divisions now served by this line. It was a single track line, unballasted, and due to the adobe character of the soil traversed, has within the past few years required expensive maintenance during the rainy season to render it reasonably safe for travel. It was shown that none of the ties and the rails which were taken up by the Company on August 26th were fit for further use. The restoration of service, therefore, necessarily involves the reconstruction of this line. The Commission has heretofore indicated that this Company should carry out a certain reconstruction program (See Decision No. 6836, supra) looking to permanence in the type of construction employed and ultimate economy in operation. The Company has expressed its willingness to conform to this program in the reconstruction of the Adams Avenue line, notwithstanding the unprofitableness of its operation in the past, provided that reasonable arrangements could be made to relieve the Company of the cost of expensive paving between rails and two feet each side thereof. Such an arrangement has been made. In the conference between the representatives of the City of San Diego, County of San Diego, the street car Company and the Commission at the conclusion of the hearing in this proceeding, the following plan was agreed upon:

"Suggested Solution of Adams Avenue

Paving and Traction Problem

"FIRST: That the City of San Diego carry through proceedings for the paving of a strip _____ feet in width on each side of Adams Avenue. (This would include all of the street excepting the part occupied by the railroad tracks and two feet on either side of the rails, which would be the portion of the street that the railroad company under the present provisions of the law would be required to pave).

"SECOND: That the street car company agree to start the construction of street car tracks on Adams Avenue immediately, and to resume street car service at the earliest possible date. The reconstruction work to be carried on under the same general specifications as were used on Logan Avenue, and the concrete base under the rails and ties to extend to an approximate depth of fourteen (14) inches below the street surface; this concrete base to fill in between the strips of pavement, and to be brought up to within five (5) inches of the finished surface of the street. The remainder of the distance to the surface of the street to be filled in as the street car company may see fit, to bring to a smooth useable surface.

"THIRD: That the above propositions be predicated upon the condition that the order of the Railroad Commission in the proceeding now pending before it directs the immediate resumption of street car service on Adams Avenue.

"FOURTH: That the foregoing plan be presented to the Common Council of the City of San Diego with the strong recommendation that it be adopted.

(Signed) John L. Bacon
Mayor, City of San Diego.

(Signed) S. J. Higgins
City Attorney of San
Diego.

(Signed) H. S. Utley,
District Attorney
By E. S. Lovett, Assist-
ant District Attorney,
San Diego County.

(Signed) Claus Spreckels,
General Manager, San Diego
Electric Railway Company.

(Signed) Read G. Dilworth
General Counsel, San Diego
Electric Railway Company.

(Signed) Hugh Gordon
Attorney, California Rail-
road Commission.

(Signed) Richard Sachse
Chief Engineer, California
Railroad Commission.

Dated: San Diego, California,
September 13, 1922."

The City Council, by its Resolution No. 28172 adopted September 14th, 1922, has approved this plan. The type of reconstruction therein proposed conforms to the permanent and substantial character of construction which the Commission has heretofore recommended.

The Commission is also advised that the Company proposes, not merely the construction of this single track line but to extend its reconstruction work so as to make it a double-track line, both over that portion which was removed and the remaining portion extending beyond the City Limits to the end of the line. The Commission is further advised that the Company has already ordered additional rail, which can be used for this purpose, and the delivery of which is expected early in October. It is apparent, therefore, that through the co-operation of the city officials and of the Company, it has been made possible to secure at an early date a new double-track car line on Adams Avenue in lieu of the former single-track line, which, according to the evidence, had become wholly inadequate for the transportation needs of the eight to ten thousand people residing in the districts traversed by it.

O R D E R

A proceeding having been instituted on the Commission's own motion to require restoration of street car service by the San Diego Electric Railway Company on Adams Avenue in San Diego and to determine the reasonable, proper and adequate facilities and regulations to be required for the future maintenance of such service, public hearings having been held and evidence, both oral and documentary, received, and the matter submitted,

THE COMMISSION HEREBY MAKES ITS FINDING OF FACT as follows:

1. The San Diego Electric Railway Company, on the night of August 26th and on the morning of August 27th, 1922, did discontinue its street car service theretofore maintained on Adams Avenue from Park Boulevard to the end of said line on Adams Avenue, and did remove its tracks theretofore existing on Adams Avenue from said Park Boulevard to a point approximately three-

quarters of a mile distant therefrom, at or near said City Limits of San Diego, and that such discontinuance of service and the removal of tracks was done without prior notice to the public or authorization from this Commission.

2. The tracks maintained and used by the said Company on its Adams Avenue line in the City of San Diego from Park Boulevard to the end of said line prior to August 26th, 1922, were and are improper and inadequate for the performance of the transportation service rendered to the public by said Company by means of said tracks, and the proper and adequate tracks and facilities to be furnished, constructed and used by said Company are those referred to and described in the following order,

And basing its Order on said findings of fact and other findings and statements of facts contained in the Opinion preceding this Order

IT IS HEREBY ORDERED

1. That the San Diego Electric Railway Company proceed within ten (10) days from the effective date of this order to reconstruct its street car tracks on its Adams Avenue line in the City of San Diego and extending approximately one mile outside thereof, from Park Boulevard in said City of San Diego to the end of said line, in accordance with estimates and plans contemplated by the Engineer's Estimates filed in this proceeding as Commission's Exhibits Nos. 1 and 2; provided, however, that within the said City of San Diego said work shall be carried on under the same general specifications as were used on the reconstruction of the Logan Avenue line by said Company, with a concrete base under the rails and ties extending to an approximate depth of fourteen inches below the street surface, said concrete base to be brought up to within five inches of the finished surface of the street, said remaining five inches to be filled in with a suitable material to provide a smooth and suitable surface for vehicular travel. The

Company shall, at the commencement of said work, furnish this Commission, for its approval, its plans of work proposed, and in the event that this Commission shall disapprove any portion of said plans, shall modify its work to conform to the recommendations and directions of this Commission. Said work shall be prosecuted diligently and completed at the earliest possible time, not to exceed one hundred and twenty (120) days from the date of commencement thereof, unless interrupted or prevented by circumstances beyond the control of the Company, in which event an extension of time shall be granted only upon proper showing and by supplemental order of this Commission.

2. Upon the completion of said track or any portion thereof permitting the extension of car service from Park Boulevard toward the end of the Adams Avenue line, the Company shall resume the operation of its street cars over such completed track or portion thereof.

3. Pending the completion of its track and the resumption of car service on Adams Avenue over such new track the Company shall continue the operation of the bus service over that portion of its Adams Avenue line on which street car service was discontinued August 27th, 1922.

4. Upon completion of said track or any portion thereof and upon resumption of street car service, the Company shall furnish the Commission satisfactory proof of complete or partial compliance with this order.

5. The effective date of this Order is hereby fixed and designated as October 12, 1922.

6. The Commission reserves the right to make such further orders as may appear just and reasonable in this proceeding.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of October, 1922.

H. W. Brundage
Twining Martin
Charles H. Lawrence
J. J. [unclear]

Commissioners.